No. 14-1055

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,

Petitioners,

v.

CENDANT MORTGAGE CORP. D/B/A PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS AND ATTORNEYS EQUITY NATIONAL CORP.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX

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TABLE OF SUPPLEMENTAL APPENDICES

Page

APPENDIX A — JUDGMENT OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 11, 2010 ..... SA1

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 11, 2010 ..... SA2

APPENDIX A — JUDGMENT OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 11, 2010

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL LIGHTFOOT, *ET AL.*,

Plaintiffs,

v.

CENDANT MORTGAGE, *ET AL.*,

Defendants.

No. CV 02-6568 CBM (AJWx)

JUDGMENT

In accordance with Federal Rule of Civil Procedure 58 and *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007) (requiring that a judgment must be set forth on a separate document), and consistent with the Court's Order Dismissing the Action With Prejudice Against Defendant Attorneys Equity National Corporation, [Doc. No. 103.], **IT IS ORDERED AND ADJUDGED** that judgment be entered in favor of Defendant Attorneys Equity National Corporation.

IT IS SO ORDERED.

DATED: June 11, 2010

By /s/
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 11, 2010

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL LIGHTFOOT, *ET AL.*,

Plaintiffs,

v.

CENDANT MORTGAGE, *ET AL.*,

Defendants.

No. CV 02-6568 CBM (AJWx)

ORDER DISMISSING THE ACTION WITH PREJUDICE AGAINST DEFENDANT ATTORNEYS EQUITY NATIONAL CORPORATION

The Court, on its own motion, dismisses the action with prejudice against Defendant Attorneys Equity National Corporation ("Attorneys Equity") based on the doctrine of *res judicata*.

FACTUAL AND PROCEDURAL BACKGROUND

I. FACTUAL BACKGROUND

The dispute arises out of the foreclosure and subsequent sale of real property located at 7106 McLaren

Ave., West Hills, CA 91307 (the "Property"), which was previously owned by Plaintiffs Beverly Ann Hollis-Arrington ("Hollis-Arrington") and Crystal Monique Lightfoot ("Lightfoot"). Hollis-Arrington refinanced the loan on the Property through Defendant Cendant Mortgage Corporation ("Cendant") in August 1999. (Verified Complaint ("Compl.") at ¶ 9.) Defendant Federal National Mortgage Association ("Fannie Mae") purchased the loan on the Property from Cendant. (*Id.* at ¶¶ 10-11.) Hollis-Arrington defaulted on her first payment and failed to make any subsequent payments on the Property. (*Id.* at ¶¶ 11-12.) In January 2000, after three months of nonpayment, Hollis-Arrington submitted an application for forbearance to Cendant. (*Id.* at ¶ 12.) No forbearance was granted, and the Property entered foreclosure.[1] (*Id.* at ¶ 16.) On or about April 24, 2000, Attorneys Equity became the trustee for the Property. (*Id.* at ¶ 14.) In August 2000, Cendant repurchased the loan from Fannie Mae because it failed to meet Fannie Mae's credit standards. [*See* Doc. No. 79.] At some point prior to September 14, 2000, Hollis-Arrington transferred the Property to her daughter, Lightfoot, by quitclaim deed. (Compl. at ¶ 18.) The Property was ultimately sold at a trustee's sale. (*Id.* at ¶ 30.)

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1. Hollis-Arrington alleges that she was promised, then denied, a forbearance. (*Id.* at ¶¶ 15-16.)

II. PROCEDURAL HISTORY OF RELATED ACTIONS

a. *Hollis-Arrington v. Cendant Mortgage Corp. et al.*, CV 00-11125 CBM (AJWx) ("first action")

On October 18, 2000, Hollis-Arrington filed a complaint in this Court against Cendant and United Guaranty Residential Insurance Company ("United Guaranty"), alleging four causes of action: (1) breach of the covenant of good faith and fair dealing; (2) fraud and deceit; (3) negligence; and (4) intentional infliction of emotional distress. [CV 00-11125, Doc. No. 1.]

On January 5, 2001, Hollis-Arrington applied for a temporary restraining order to prevent the sale of the Property. [CV 00-11125, Doc. No. 21.] On January 10, 2001, the Court scheduled a hearing on the matter for January 29, 2001, and also ordered that the non-judicial foreclosure sale of the Property be postponed by Cendant until February 6, 2001. [CV 00-11125, Doc. No. 25.] On February 1, 2001, after a hearing on the matter, the Court denied Hollis-Arrington's Application for a Temporary Restraining Order.[2] [CV 00-11125, Doc. Nos. 43-44.] On May 31, 2001, the Ninth Circuit dismissed Hollis-Arrington's appeal of the Court's order. [CV 00-11125, Doc. No. 59.]

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2. The Court also set aside defaults previously entered by the Clerk of Court against Cendant and United Guaranty. [CV 00-11125, Doc. No. 44.]

Appendix B

During the pendency of the first action, Plaintiffs filed bankruptcy petitions. [*See* CV 00-11125, Doc. No. 58.] The action was thereafter subject to an automatic stay and removed from the Court's active calendar on May 23, 2001. [CV 00-11125, Doc. No. 58.] On July 31, 2001, the Court, by stipulation and order, dismissed the action with prejudice as against United Guaranty. [CV 00-11125, Doc. No. 62.] On October 5, 2001, the case was restored to the Court's active calendar. [CV 00-11125, Doc. No. 73.]

On July 15, 2002, the Court granted Cendant's Motion for Summary Judgment, and judgment was entered forthwith in Cendant's favor. [CV 00-11125, Doc. Nos. 102-03.] The Ninth Circuit affirmed the Court's order on May 16, 2003. [CV 00-11125, Doc. No. 120.] On August 29, 2003, the Court denied Plaintiffs' Motion to Set Aside the Judgment. [CV 00-11125, Doc. No. 127.] The Ninth Circuit dismissed Hollis-Arrington's appeal of the Court's order for failure to prosecute.

b. ***Hollis-Arrington v. Cendant Mortgage Corp. et al.*, CV 01-5658 CBM (AJWx) ("second action")**

On June 27, 2001, Hollis-Arrington filed the second action against Cendant, Fannie Mae, and First American Title Company ("First American"), which also related to the foreclosure and sale of the Property. [CV 01-5658, Doc. No. 1.] On July 3, 2001, she filed a First Amended Complaint. [CV 01-5658, Doc. No. 5.]

On July 27, 2001, default was entered against Cendant by the Clerk of Court. [CV 01-5658, Doc. No. 13.] On

August 6, 2001, the Court vacated and set aside the default against Cendant because the default was filed in error. [CV 01-5658, Doc. No. 23.] Ten days later, on August 16, 2001, the Court, by stipulation and order, dismissed the action with prejudice as against First American. [CV 01-5658, Doc. No. 33.]

On September 11, 2001, Hollis-Arrington filed an *Ex Parte* Application for a Temporary Restraining Order to prevent third-party purchasers from evicting her from the Property pending the Court's determination of her Motion to Vacate or Set Aside the Foreclosure Sale, and a stay pending appeal. [CV 01-5658, Doc. No. 45.] On November 29, 2001, the Ninth Circuit affirmed the Court's September 14, 2001 order denying Hollis-Arrington's *Ex Parte* Application. [CV 01-5658, Doc. Nos. 47, 61.]

On December 4, 2001, the Court granted the third-party purchasers' request for leave to intervene to expunge the lis pendens on their title to the Property. [CV 01-5658, Doc. No. 65.] Thereafter, on February 12, 2002, the Court denied Hollis-Arrington's Motion to Set Aside the Foreclosure Sale, granted in part Fannie Mae's Motion to Dismiss with Prejudice, granted the third-party purchasers' Motion to Expunge the lis pendens on their title to the Property, and granted Hollis-Arrington leave to file an amended complaint. [CV 01-5658, Doc. No. 105.]

On March 12, 2002, Hollis-Arrington filed a Second Amended Verified Complaint against Cendant, Fannie Mae, and Attorneys Equity alleging thirteen causes of action: (1) Racketeer Influenced and Corrupt Organizations Act

("RICO") violations; (2) Truth in Lending Act ("TILA") violations; (3) enforcement of rescission on the Property; (4) violation of the Real Estate Settlement Procedures Act ("RESPA"); (5) conspiracy to violate right to due process; (6) violation of right to due process pursuant to 42 U.S.C. § 1983; (7) fraud and deceit; (8) negligent misrepresentation; (9) civil conspiracy; (10) intentional infliction of emotional distress; (11) violation of foreclosure procedure pursuant to state law; (12) quiet title; and (13) slander of title. [CV 01-5658, Doc. No. 109.]

On February 12, 2002, the Court granted Fannie Mae's Motion to Dismiss Plaintiff's RESPA claim with prejudice. [CV 01-5658, Doc. No. 105.] On March 15, 2002, Fannie Mae and Cendant separately filed Motions to Dismiss the second action. [CV 01-5658, Doc. No. 110-11.] On May 28, 2002, the Court granted with prejudice Fannie Mae and Cendant's Motions to Dismiss Hollis-Arrington's RICO, TILA, and Section 1983 claims but reserved ruling on the state law claims pending responses to a Court-issued Order to Show Cause.[3] [CV 01-5658, Doc. No. 131.] On July 1, 2002, after having reviewed and received the parties' responses to the Court's Order to Show Cause, the Court dismissed with prejudice all remaining state claims against all defendants, as a matter of law or for failure to state a claim. [CV 01-5658, Doc. Nos. 135-36.] Judgment was entered in favor of Cendant, Fannie Mae, and non-appearing Attorneys Equity as to all of Hollis-Arrington' s claims. [CV 01-5658, Doc. No. 136.] On April

3. Plaintiff withdrew her RESPA claim as to all remaining defendants. [CV 01-5658, Doc. No. 131.]

17, 2003, the Ninth Circuit affirmed the judgment of the Court. [CV 01-5658, Doc. No. 152.]

On August 29, 2003, the Court denied Hollis-Arrington's Motion to Set Aside the Judgment. [CV 01-5658, Doc. No. 162.] The Ninth Circuit subsequently denied Hollis-Arrington's petition because the case did not warrant intervention by the Ninth Circuit. [CV 01-5658, Doc. No. 166.]

c. The Instant Action

On July 18, 2002, Plaintiffs filed the instant action in the Los Angeles Superior Court against Cendant, Fannie Mae, Robert A. Matthews ("Matthews"), and Attorneys Equity, alleging the following: (1) wrongful foreclosure; (2) the trustee's sale should be voided; (3) fraud and deceit; (4) racial discrimination in violation of the Unruh Act; (5) violation of California state law due to fraud, quiet title, and adverse possession; (6) slander of title; (7) negligent misrepresentation; (8) civil conspiracy; (9) intentional infliction of emotional distress; and (10) adverse possession. Plaintiffs also sought declaratory relief.

Fannie Mae petitioned to remove the case to the federal district court on August 22, 2002. [Doc. No. 1.] Cendant, Attorneys Equity, and Defendant Robert Matthews separately joined in the notice of removal of the action on August 23, 2002. [Doc. Nos. 3-4, 6.] Plaintiffs' *Ex Parte* Application to remand the case back to the Los Angeles Superior Court was denied by the Honorable Ronald S.W. Lew on September 5, 2002. [Doc. No. 18.]

On September 13, 2002, Plaintiffs filed a Notice of Appeal from the Court's Order. [Doc. No. 30.] The Ninth Circuit granted Plaintiffs' Motion for Voluntary Dismissal on October 31, 2002. [Doc. No. 49.]

i. Disposition with Respect to Fannie Mae, Cendant, and Matthews

On August 27, 2002, Fannie Mae and Cendant filed a Motion to Dismiss the instant action. [Doc. No. 12.] The following day, on August 28, 2002, Matthews filed a Motion to Dismiss. [Doc. No. 10.] On September 12, 2002, the Court granted Fannie Mae's and Cendant's Motion for Temporary Protection Order and for Order Staying Discovery pending the Court's disposition of the pending Motions to Dismiss. [Doc. No. 26.] On February 20, 2003, the Court granted Cendant's and Fannie Mae's Motion to Dismiss based on the doctrine of *res judicata* because the two earlier actions involved the same claim, the same parties or parties in privity with previous parties, and final judgments on the merits were entered in those actions.[4] [Doc. No. 59.] On April 11, 2003, the Ninth Circuit dismissed the appeal for lack of jurisdiction. [Doc. No. 67.] The Court denied Plaintiffs' Motion to Set Aside the Judgment on August 29, 2003. [Doc. No. 79.] On January 6, 2004, it appears that the Ninth Circuit affirmed the Court's order denying Plaintiffs' Motion to Set Aside the Judgment. [Doc. Nos. 80, 89.] The Court entered judgment in favor of Cendant, Fannie Mae, and Matthews on October 21, 2009. [Doc. No. 99.]

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4. The Court also granted Matthews' Motion to Dismiss for Failure to State a Claim. [Doc. No. 59.]

ii. Case Status with Respect to Attorneys Equity

On August 30, 2002, Plaintiffs filed a request for entry of default as to Attorneys Equity. [Doc. No. 16.] The request was denied due to deficiencies with the proof of service. [Doc. No. 17.] Plaintiffs filed an amended proof of service on September 6, 2002; default was entered by the clerk as to Attorneys Equity on September 9, 2002. [Doc. Nos. 19, 22.] On September 18, 2002, Plaintiffs filed a Motion for Default Judgment against Attorneys Equity. [Doc. No. 37.] On June 26, 2003, Plaintiffs filed an *Ex Parte* Application for Renewed Motion to Enter Default Judgment against Attorneys Equity. [Doc. No. 74.] On August 29, 2003, the Court denied Plaintiffs' *Ex Parte* Application for Renewed Motion to Enter Default Judgment because Plaintiffs' *Ex Parte* Application and supporting declaration failed to prove the damages alleged in the Verified Complaint. [Doc. No. 78.]

On January 5, 2004, the Court removed the action from the active calendar. [Doc. No. 88.] On January 6, 2004, it appears that the Ninth Circuit affirmed the Court's order denying Plaintiffs' Motion to Set Aside the Judgment and the Court's order denying Plaintiffs' *Ex Parte* Application for Renewed Motion to Enter Default Judgment Against Attorneys Equity. [Doc. Nos. 80, 89.]

Plaintiffs' mandamus petition was denied by the Ninth Circuit on November 3, 2008. [Doc. No. 90.]

On April 7, 2009, Plaintiffs filed a "Motion to Restore Case to Active Caseload for Purpose of Entering Final Judgment; Pursuant to Rule 54(b,c) of the F.R.C.P." ("Plaintiffs' Motion to Restore"). [Doc. No. 92.] The Court issued an Order to Show Cause ordering Attorneys Equity to respond to Plaintiffs' Motion to Restore on May 6, 2009. [Doc. No. 96.] Attorneys Equity filed a response on May 18, 2009. [Doc. No. 97.] Plaintiffs filed their reply on May 20, 2009. [Doc. No. 98.] Plaintiffs, meanwhile, filed a Petition for a Writ of Mandamus in the Ninth Circuit and the Court issued an order abstaining from ruling on Plaintiffs' Motion to Restore pending disposition of the matter by the Ninth Circuit. [Doc. No. 100.] On April 14, 2010, the Ninth Circuit denied Plaintiffs' Petition for a Writ of Mandamus without prejudice, finding that Plaintiffs may file a new petition if the Court has not entered a final judgment as to Attorneys Equity within 60 days of the Ninth Circuit's order. [Doc. No. 101.]

On May 27, 2010, the Court granted Plaintiffs' Motion to Restore and further ordered Plaintiffs to show cause as to why the action shall not be dismissed with prejudice as to Attorneys Equity based on the doctrine of *res judicata*. [Doc. No. 102.] Plaintiffs did not respond to the Court's Order to Show Cause.

DISCUSSION

The instant action, which was dismissed as to the other defendants based on the doctrine of *res judicata*, must also be dismissed as to Attorneys Equity.

Appendix B

I. THE COURT, *SUA SPONTE*, RAISES THE ISSUE OF DISMISSAL

To prevent judicial waste and facilitate the orderly administration of justice, "if a court is on notice that it has previously decided the issue presented, the court may dismiss [an] action *sua sponte*, even though the defense has not been raised." *Arizona v. California*, 530 U.S. 392, 412 (2000) (internal citations omitted); *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1054-55 (9th Cir. 2005); *Columbia Steel Fabricators, Inc. v. Ahlstrom Recovery*, 44 F.3d 800, 802-03 (9th Cir. 1995) ("*Res judicata* doctrine preserves scarce judicial resources, as well as protecting litigants from multiple lawsuits . . . so courts have an independent interest in raising it, even if a party does not."). The parties, however, must be given an opportunity to be heard. *Headwaters*, 399 F.3d at 1055.

The Court has been involved in three actions initiated wholly, or in part, by Hollis-Arrington. The Court therefore has extensive knowledge of the facts, issues, and parties involved in the three proceedings, all of which concern the same underlying events – the foreclosure and sale of the Property. The Court, *sua sponte*, raises the issue of *res judicata* because entry of a default judgment against Attorneys Equity would squarely conflict with a prior judgment entered in Attorneys Equity's favor. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (affirming the district court's denial of a motion for entry of a default judgment and *sua sponte* dismissal of the plaintiff s claims); *United States v. Approximately $28,000 in U.S. Currency*, 2010 U.S. Dist. LEXIS 40302, *4 (N.D.

Cal. Apr. 5, 2010) (Conti, J.) (explaining that the entry of default judgment is discretionary).

Plaintiffs have been heard previously on the issue of whether their claims are barred under the doctrine of *res judicata*. Cendant and Fannie Mae presented the issue in their Motion to Dismiss in this action, and Plaintiffs filed an opposition to their Motion to Dismiss and appeared at a hearing on the matter. Although the Court did not specifically address the issue of *res judicata* with respect to non-appearing Attorneys Equity, the issue is equally applicable to that defendant. *See Columbia Steel Fabricators*, 44 F.3d at 803 (affirming a *sua sponte* grant of summary judgment in favor of a non-appearing defendant because the nonmoving party had the opportunity to be heard on the issue of *res judicata* as it applied to another defendant); *Silverton v. Dept. of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) ("A District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related."). Plaintiffs had an additional opportunity to be heard in response to the Court's Order to Show Cause dated May 27, 2010. Plaintiffs, however, failed to file a response. Thus, the Court properly exercises its power to *sua sponte* raise the issue of *res judicata*.

II. RES JUDICATA BARS THE INSTANT ACTION AGAINST ATTORNEYS EQUITY

"[T]he doctrine of *res judicata* provides that a final judgment on the merits bars further claims by parties

or their privities based on the same cause of action, and is central to the purpose for which courts have been established, the conclusive resolution of disputes within their jurisdiction." *Hells Canyon Pres. Council v. US. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005) (quoting *Headwaters Inc.*, 399 F.3d at 1051-52). The doctrine serves "to conserve judicial resources, protect litigants from multiple lawsuits, and foster certainty and reliance in legal relations." *United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1000 (9th Cir. 1980). A party bound by *res judicata* is precluded from bringing claims that were raised in the prior proceeding, but also claims that could have been raised. *Providence Health Plan v. McDowell*, 385 F.3d 1168, 1173-74 (9th Cir. 2004). *Res judicata* only applies where the following elements are satisfied: (1) an identity of claims; (2) a final judgment on the merits; and (3) privity between the parties. *Hells Canyon*, 403 F.3d at 686.

a. Identity of Claims

The Ninth Circuit relies on the following factors to determine whether the actions involve the same claims:

> "(1) whether the rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts."

Headwaters Inc., 399 F.3d at 1052 (internal quotations and citations omitted). The fourth element is the most important factor in the analysis. *Id.*

Here, the elements demonstrate that the claims at issue in the prior proceedings correspond almost exactly to the claims at issue in the instant action. Specifically, and most importantly, the second action and the instant action arise from the same transactional nucleus of facts—the foreclosure and sale of the Property. *See Western Sys., Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir. 1992) ("Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together."). Both complaints include allegations that Attorneys Equity served as the trustee during the foreclosure process, and that, in that capacity, Attorneys Equity unlawfully held a trustee sale of the Property. The two actions therefore necessarily involve the infringement of the same right, Plaintiffs' alleged ownership of and entitlement to the Property.

Of the nine causes of action in the Verified Complaint in the instant action, seven are almost identical to the causes of action set forth in the second action.[5] In the instant

5. In both actions, Plaintiffs seek relief for the defendants' alleged deceit, fraud, intentional infliction of emotional distress, wrongful foreclosure, and slander of title. In both actions, Plaintiffs claim that Cendant, Fannie Mae, and Attorneys Equity were involved in a conspiracy, though Plaintiffs relied on a RICO theory in the second action and civil conspiracy theory in the instant action.

action, Plaintiffs also allege discrimination in violation of the California Unruh Act and seeks to void the trustee's deed. Plaintiffs were clearly aware of these claims and could have brought them in the second action because they concern the same "transactional nucleus of facts"—the loan to Hollis-Arrington by Cendant and the subsequent foreclosure and sale of the Property. *Tahoo-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003) ("Newly articulated claims based on the same nucleus of facts may still be subject to a res judicata finding if the claims could have been brought in the earlier action."); *Lindsay v. Beneficial Reins. Co.*, 59 F.3d 942, 952 (9th Cir. 1995) (res judicata applies even if second action involves new evidence or new theories). Indeed, in the second action, Plaintiffs specifically alleged that the defendants conspired to offer and offered loans to low- and middle-income people of color despite the fact that those individuals did not qualify for the loans. Plaintiffs also expressly sought to rescind the trustee's deed and invalidate the trustee's sale. The two actions necessarily rely on the same evidence—the loan process, the default of the loan, and the foreclosure and sale of the Property.

Finally, the rights or interests established in Attorneys Equity's favor, and which resulted in the dismissal of the second action with prejudice, would be impaired by the entry of judgment against Attorneys Equity in the instant action. The Court finds that an identity of claims exists between the proceedings.

b. Final Judgment on the Merits

A final judgment on the merits bars a plaintiff from bringing the same cause of action in a new proceeding. *Hells Canyon*, 403 F.3d at 686. A court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) constitutes a final judgments on the merits. *See Stewart v. United States Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002) (explaining that "a dismissal for failure to state a claim under Rule l 2(b)(6) is a 'judgment on the merits' to which res judicata applies.") (internal citations omitted).

In the second action, the Court dismissed Hollis-Arrington's claims against all defendants, including non-appearing Attorneys Equity, as a matter of law or for failure to state a claim and the Ninth Circuit affirmed the judgment of the Court. [CV 01-5658, Doc. Nos. 136, 152.] Accordingly, the Court finds that the Court's order in the second action constituted a final judgment on the merits.

c. Privity Between the Parties

Res judicata only binds those who were parties to, or were in privity with parties to, the earlier actions. *See Hells Canyon*, 403 F.3d at 686. Privity "is a legal conclusion designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved." *Headwaters*, 399 F.3d at 1052-53 (internal quotations and citations omitted). "A nonparty can be bound by the litigation choices made by his virtual representative, . . .

only if certain criteria are met: '[A] close relationship, substantial participation, and tactical maneuvering all support a finding of virtual representation; identity of interests and adequate representation are necessary to such a finding.'" *Id.* at 1053 (internal quotations omitted).

The parties in the second action are almost identical to those in the instant action. Hollis-Arrington, Attorneys Equity, Cendant, and Fannie Mae are parties in both proceedings. Moreover, the Court is satisfied that Hollis-Arrington was the virtual representative of Lightfoot, the only non-party to the second action. The parties clearly share a close relationship due to the fact that Lightfoot is Hollis-Arrington's daughter and resided in Hollis-Arrington's home, the Property. *See Velazquez v. INS*, 1999 U.S. Dist. LEXIS 17933, *8-10 (N.D. Cal. Nov. 10, 1999) (Jenkins, J.) (concluding that privity existed between close relatives). Although Lightfoot was not a named party to the second action, Hollis-Arrington transferred the property to Lightfoot and Lightfoot filed a bankruptcy petition to forestall the sale of the Property. Plaintiffs therefore share the same interests in the claims and Hollis-Arrington adequately and aggressively pursued those claims in all prior proceedings. Thus, the Court finds privity between Plaintiffs.

Appendix B

CONCLUSION

Based on the foregoing, the Court hereby orders that the action be **DISMISSED WITH PREJUDICE** against Attorneys Equity, and judgment entered forewith.

IT IS SO ORDERED.

DATED: June 11, 2010

By /s/
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE